

The Court has, both as regards costs of applications, and the general costs (Court and process fees and pleaders' fees) of the suit in all cases, full power to apportion them as it thinks right. And I may add that costs being part of the decree, there is an appeal on the subject. (Section 540.)

Any order for costs, which is given separate and not as part of a decree, may be executed exactly as if it were a money decree. (See sections 218-22.)

## SECTION VI.—EXECUTION OF DECREE.

### § 24.—*Method of Execution.*

This is quite a separate business. It is not at all necessary that the Court which passed the decree should execute it. The business of execution of decrees for all or some of the Courts is sometimes entrusted to one Court at head-quarters. But this is a question of the distribution of business belonging to the same district.

Where it is necessary to send a decree to another district, beyond the local jurisdiction of the Court that passed it, this has to be done in the manner prescribed in sections 223-4.

A decree may be transferred and executed by the transferee (sections 232-3.)

A decree may be executed against the representative of a deceased judgment-debtor, but only to the extent of the property which the representative has received and not already *duly* disposed of. (Section 234.)

An application for execution must set forth the particulars specified in section 235.

Decrees are executed by attachment and sale (if necessary) of movable property; by attachment and sale (if necessary) of immovable property; by arrest and civil imprisonment of the debtor.

In certain cases, before the decree is executed, notice is issued to the party against whom execution is applied, requiring him to show cause, if any, against the execution. (Section 248.)

The decree must be executed within one year after its issue, or one year from some previous application or attempt to execute it.

When execution is allowed, a warrant for the execution is issued. (Section 250.)

§ 25.—*Payment into Court.*

Money paid in satisfaction of a decree must be paid into Court, or out of Court, or in any manner specially directed by the Court which passed the decree. (Section 257.) If paid out of Court the receiver must certify the payment to the Court executing; or if he does not the judgment-debtor may inform the Court and get an order to the receiver to show cause why the payment should not be recorded in Court.

If an order is not made, and the payee has not recorded the receipt, payment out of Court will go for nothing.

As a general rule it is always safe and even necessary to pay everything through the Court, because, though it is possible to trust to the payee reporting payment out of Court, or even to bring him up and ask him, still if it is denied and the payer fails to satisfy the Court that an order for recording payment should be made, may lose the benefit of his payment.

§ 26.—*Execution in other Cases.*

The above, of course, refers to cases where the money has to be paid. Where the decree requires delivery of possession of some article, or of house or lands, or something else, there are numerous sections which describe the way in which execution is made in each case. (Sections 259-65.)

§ 27.—*Property which is not liable to attachment.*

Where attachment of movable property is ordered, it should be mentioned that various articles, necessary wearing apparel, tools of artizans, agricultural implements and cattle necessary for husbandry and some other kinds of property, whether actually existing, or what are called by lawyers "choses in action;" i.e., valuable rights, are not attachable. (Section 266.) Pensions are exempt, and so are the pay and allowances of native soldiers, as well as the wages of

domestic servants and labourers. The salary of public and Railway officials, when not exceeding 20 rupees a month, is exempt; if it exceeds 20 rupees a month one-half may be attached.

Debts due to the judgment-debtor are attachable under the conditions of section 268, and so are decrees due to the judgment-debtor. The attachment of such debts, and also of salaries, is made by prohibitory order addressed to the person who has to make the payment.

Attachment of lawfully seizable property is made by actual seizure and deposit in the custody of the proper officer.

The power of actually taking possession is limited by the conditions as to time and place, and breaking open doors, &c., specified in section 271.

#### § 28.—*Immovable Property.*

Immovable property is attached by an order prohibiting the judgment-debtor from transferring or changing the property in any way, and warning persons from receiving the property by any such transfer. This order is proclaimed by beat of drum on the spot, and a copy is fixed up on some conspicuous part of the property, and also at the Court-house; if it is revenue-paying land, also at the Collector's Court-house. (See section 274.) Any alienation made after such an order is absolutely null and void. (Section 276.)

#### § 29.—*Objections to Attachment.*

There often are objections to attachment. Persons come forward and say that the property attached belongs to them, not to the debtor, and ought to be released. This objection may of course be real, or it may be the result of fraud, or a secret transfer made in expectation of the decree and so to avoid attachment. Not only are such fraudulent transfers void, but in some cases are punishable under the Penal Code<sup>9</sup>.

The Court executing must make an enquiry in such cases and take evidence, and may postpone any sale that has been notified, pending the investigation. If the Court thinks that the property was not recently in possession of the judgment-debtor or as so in

<sup>9</sup> See Chapter XI, sections 206-7.

trust for some other person, and otherwise as set forth in section 280, an order for release *shall* be passed. If not the attachment is upheld, and then the claimant must institute a regular civil suit to establish his right (section 283), otherwise the order is conclusive ; there is no appeal or other redress but bringing a regular suit.

It often appears that the property is temporarily attached, but that it is *subject* to some *lien* or *mortgage* : in that case (section 282) the attachment continues, and sale may be made, *but subject* to the lien.

If several Courts attach the same property, see section 285.

### § 30.—*Sale of Attached Property.*

There are specific rules for sale of property, both movable and immovable, sections 286-295, 296-303 and 304-327. But as these concern the Courts, not the forest officer, I do not propose to give any account of them.

It need only be borne in mind that under section 320, local Governments may, with the sanction of the Governor-General in Council, notify that claims in which the sale of immovable property has been ordered, are to be transferred to the Collector, and then a special procedure for making the property available, as far as it will go, to meet all existing decrees against it, and for letting or mortgaging land *instead of selling it*, as well as for managing the land and paying the debts, out of the proceeds, is provided.

In some provinces and districts it will also be borne in mind that there are specific restrictions placed on the sale of immovable property, usually some form of report and sanction for houses and lands, and some reference to the highest judicial authority before selling *ancestral* landed property<sup>10</sup>.

### § 31.—*Arrest and Imprisonment.*

The debtor arrested in execution of a decree must be taken before the Court, and his imprisonment in the civil jail will be

<sup>10</sup> These are referred to in section 327 of the Code.